IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2020 of 2004

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? :

2. To be referred to the Reporter or not? :

3. Whether Their Lordships wish to see the fair copy of the judgement? :

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? :

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? :

SANCHETI SAW MILL

Versus

STATE OF GUJARAT & ORS.

Appearance:

MR BC DAVE for the Petitioner
MR NAGESH SOOD, AGP for Respondents Nos. 1-3

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 28/04/2004

ORAL JUDGEMENT

RULE returnable today. Learned AGP Mr.Sood waives service of rule.

Feeling aggrieved by the order dated 23rd January, 2004, the petitioner, a Saw Mill, has preferred the present petition.

It appears that the petitioner was granted licence for Saw Mill. On 21st June, 2003 the petitioner was found to be in possession of timber in excess of what it could account for. It was, therefore, held that the petitioner had received the timber illegally cut from the forest and had thus committed breach of conditions of licence. On 6th/23rd December, 2003 the petitioner was given notice to show-cause why for the acts of commission/omission mentioned therein the petitioner's licence should not be cancelled. The said notice was answered by the petitioner. Pursuant to the said notice and the reply given by the petitioner, by impugned order dated 23rd January, 2004 made by the Deputy Conservator of Forests, Valsad (North), the excess timber found in the possession of the petitioner worth Rs.6,16,965=00 has been ordered to be confiscated. Feeling aggrieved, the petitioner has preferred the present petition.

Mr.Dave has submitted that by notice dated 6th/23rd December, 2003 the petitioner was called upon to show-cause why for the acts of commission/omission mentioned in the notice the licence of the petitioner should not be cancelled. However, by the said notice the petitioner was not called upon to show-cause why the aforesaid goods should not be confiscated. Thus, the impugned order of confiscation of the goods has been made in violation of principles of natural justice and fair play.

Learned AGP Mr.Sood has contested the petition. He has submitted that the show-cause notice included all the details of excess timber found in possession of the petitioner and how the petitioner had committed breach of conditions of licence. Thus, the petitioner had been given full opportunity to defend himself. It is a mere technical irregularity that by the said show-cause notice the petitioner was not called upon to show-cause why the excess timber found in his possession should not be confiscated. Hence, in the submission of Mr.Sood the

principles of natural justice have been duly complied with.

I am unable to agree with learned AGP Mr.Sood. Indisputably, the petitioner was not called upon to show-cause why the excess goods found in his possession should not be confiscated. Hence, the impugned order of confiscation has undoubtedly been made without affording opportunity to the petitioner to defend such action.

In above view of the matter the petition is allowed. The impugned order dated 23rd January, 2004 made by the Deputy Conservator of Forests, Valsad (North) (Annexure-'F' to the petition) is quashed and set aside. Rule is made absolute with costs.

It is clarified that the respondents authorities shall be entitled to take punitive action against the petitioner for irregularity/illegality committed by him, after issuing due show-cause notice and in compliance with principles of natural justice and fair play.

(Ms. R.M.Doshit, J.)

/sakkaf